

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)**

Present:

Mr. Justice Md. Khairul Alam
and
Mr. Justice A.K.M Rabiul Hassan

Criminal Miscellaneous Case No. 27569 of 2023

Rouson Ara Mia

.....Petitioner

-Versus-

The State and another

..... Opposite parties

Mr. K.S. Salah Uddin Ahmed, Senior Advocate with
Md. Aserul Haque and
Mr. Sheikh Md. Golam Kibriya, Advocates

..... For the petitioner

Mr. Muhammad Sazzad Hossain, along with
Mr. Fockrul Bahar Shaki, Advocates

..... For the opposite party No.02

Heard on: 23.04.2026 and
Judgment on: 30.04.2026.

Md. Khairul Alam, J:

By this Rule issued under section 561A of the Code of Criminal Procedure, 1898, the accused petitioner seeks to quash the proceedings of Sessions Case No. 1401 of 2021, arising out of C.R. Case No. 83 of 2019 under section 138(1) of the Negotiable Instruments Act, 1881 (hereinafter “the Act”), now pending before the Court of Joint Metropolitan Sessions Judge, 2nd Court, Sylhet.

Relevant facts for disposal of the Rule are that the present opposite party no. 2, Haider Rahman, as complainant, filed a petition of complaint before the Court of the learned Chief Metropolitan Magistrate, 1st Court, Sylhet, implicating the petitioner and her husband, Mahorom Miah, as accused for dishonour of a cheque bearing No. STB 3344798, dated 20.01.2019, drawn on BRAC Bank Limited by Mahorom Miah in favour of the complainant, from the joint account of the petitioner and her husband, for a sum of Taka 5,90,000/- (Taka Five Lac and Ninety Thousand). Upon receipt of the petition of complaint, the learned Magistrate examined the complainant under section 265(C) of the Code of Criminal Procedure, 1898 and took cognizance of the offence against both the accused, including the present accused petitioner and issued process against them. Accordingly, C.R. Case No. 83 of 2019 under section 138(1) of the Act was initiated and the petitioner obtained bail.

Since the offence is exclusively triable by the Court of Sessions, the case was, upon transfer, renumbered as Sessions Case No. 1401 of 2021 and the case record was transmitted to the Court of the Joint Metropolitan Sessions Judge, 2nd Court, Sylhet, where it is currently pending for trial and disposal.

Being aggrieved by the said proceedings, the accused petitioner moved this Court and obtained the Rule as well as an order of stay of the impugned proceedings.

Mr. K.S. Salah Uddin Ahmed, the learned Advocate appearing on behalf of the petitioner, submits that no offence under section 138 of the Act has been constituted against the petitioner merely on the ground that she was a joint account holder along with her husband. He further submits that the petitioner neither drew nor issued the cheque in question and, as such, in the absence of any overt act on her part in relation to the issuance of the cheque, the initiation and continuation of the proceeding against her under section 138 of the Act is wholly misconceived and not maintainable in law. He next submits that even if the allegations made in the petition of complaint are taken to be true in their entirety, no specific allegation has been brought against the petitioner showing her involvement in the drawing, signing or issuance of the impugned cheque. He further submits that section 138 of the Act does not envisage any vicarious criminal liability upon a joint account holder merely by virtue of such status, unless the cheque in question was drawn or issued by that person. According to him, since the cheque was admittedly drawn and issued exclusively by the petitioner's husband from their joint account, the petitioner cannot be held

criminally liable for the dishonour thereof, and therefore, the continuation of the impugned proceeding against the petitioner amounts to an abuse of the process of the Court, which is liable to be quashed.

Mr. Muhammad Sazzad Hossain, the learned Advocate for opposite party no. 2 submits that the petitioner and her husband are jointly responsible for the liabilities covered by the impugned cheque, and therefore the petitioner cannot avoid her involvement in the issuance of the dishonoured cheque. He next submits that once a cheque is issued from a joint account, all joint account holders are equally liable for its dishonour under section 138 of the Act. He next submits that the petition of complaint filed by opposite party no. 2 contains all the necessary averments required to constitute an offence under section 138 of the Act, so the petition of complaint cannot be quashed. He further submits that the petitioner cannot separate herself from her husband, as both are jointly liable for the underlying debt, and the cheque was issued from their joint account in discharge of the said debt.

We have heard the learned Counsel for both parties and have carefully perused the materials on record, including the petition of complaint.

The complainant's case, as transpired from the petition of complaint, is that the petitioner and her husband, taking advantage of their family relationship with the complainant, borrowed money from him, which eventually accumulated to a sum of Taka 5,90,000/- (Taka Five Lac and Ninety Thousand). In discharge of this liability, the husband of the petitioner issued a cheque bearing No. STB 3344798 dated 20.01.2019 drawn on BRAC Bank Limited. Upon presentation by the complainant, the cheque was returned dishonoured with the bank's endorsement "Insufficient Funds." The complainant further avers that a legal notice dated 24.01.2019 was duly sent to the accused persons demanding payment, which remained unheeded. On these averments, the complainant alleged that the petitioner, jointly with her husband, committed the offence under section 138 of the Act.

It is an admitted position between the parties that the drawer of the cheque is not a company but a private individual, namely Mahorom Miah, the husband of the petitioner. It is equally undisputed that the petitioner herself did not draw or sign the cheque in question.

In order to appreciate the rival contentions, it is necessary to set out section 138 of the Act, which reads as follows:

“138. Dishonour of cheque for insufficiency, etc. of funds in the account- (1) Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of*

information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within thirty days of the receipt of the said notice.

(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or (c) by publication in a daily Bangla national newspaper having wide circulation.

(2) Where any fine is realized under sub-section (1), any amount up to the face value of the cheque as far as is covered by the fine realized shall be paid to the holder.

(3) Notwithstanding anything contained in sub-section (1) and (2), the holder of the cheque shall retain his right to establish his claim through civil court if whole or any part of the value of the cheque remains unrealized.”

From a bare reading of Section 138 of the Act, the following conditions must be cumulatively satisfied before a person can be deemed to have committed the offence:

(a) A person must have drawn a cheque on an account maintained by him with a banker for payment of any

amount of money to another person from that account;

- (b) The cheque must have been presented to the bank within six months from the date of its drawing or within the period of its validity, whichever is earlier;*
- (c) The cheque must have been returned by the bank unpaid on account of insufficiency of funds or for exceeding the amount arranged;*
- (d) The payee or holder in due course must have made a demand for payment by written notice to the drawer within thirty days of receipt of information of the dishonour; and*
- (e) The drawer must have failed to make payment of the amount within thirty days of receipt of the said notice.*

It is only upon the satisfaction of all the aforementioned conditions that the person who drew the cheque can be deemed to have committed an offence under section 138 of the Act.

It is a well-settled statutory interpretation that penal provisions must be construed strictly, and not in a routine or casual manner. Vicarious criminal liability is fundamentally contrary to the general principles of criminal jurisprudence and cannot be fastened upon a person unless the statute expressly so provides. A careful reading of the language of section 138 of the Act makes it manifest that the expression “such person” refers exclusively to the person who has drawn the cheque that

is returned unpaid under the conditions stipulated in the section. The liability under section 138 is personal and attaches solely to the drawer of the dishonoured cheque.

In the Act, section 140 expressly provides a provision of vicarious liability, which runs as follows:

“140. Offences of Companies- (1) *If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) *Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

Explanation. - For the purposes of this section-

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.”

Upon a plain reading of the aforesaid provision, it becomes manifest that where a company, being the drawer of a dishonoured cheque, is found to have committed an offence under section 138 of the Act, vicarious liability is fastened upon the person who, at the time of commission of the offence, was in charge of and responsible to the company for the conduct of its business. The explanation appended to the provision further makes it clear that the expression ‘company’ includes any body corporate, firm or other association of individuals. A careful and meaningful reading of the provision, however, reveals that no vicarious liability can be fastened upon a mere joint account holder who neither drew, signed, issued, nor endorsed the cheque in question.

Accordingly, the fact that the petitioner was a joint account holder with her husband, from which account her husband drew and issued the cheque in question does not, in law, render the petitioner liable under section 138 of the Act. The analogy of section 140, applicable to companies, cannot be extended to

impose vicarious liability on a joint account holder in the present circumstances.

In the case of Mrs. Aparna A. Shah vs. M/s. Sheth Developers Pvt. Ltd., as referred by the learned Advocate for the petitioner, the Indian Supreme Court held as under:

“ We also hold that under section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to section 138 of the N.I. Act which would have no application in the case on hand. The proceedings filed under section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under section 138. The culpability attached to dishonour of a cheque can, in no case “except in case of section 138 of the N.I. Act” be extended to those on whose behalf the cheque is issued.”

We respectfully adopt the above principle as correctly stating the law, which is equally applicable to the interpretation of section 138 of the Act as operative in Bangladesh.

In light of the foregoing analysis, we find merit in the submissions advanced by the learned Advocate for the petitioner that the complaint filed by the complainant does not make out

any case under section 138 of the Act against the petitioner, who is merely a joint account holder with her husband and who did not draw, sign, or issue the dishonoured cheque, and no vicarious liability can be fastened upon her under the Act on account of that status alone, therefore, the continuation of the criminal proceedings against her would, in these circumstances, amount to an abuse of the process of the court.

Accordingly, the Rule is made absolute.

The proceedings of Sessions Case No. 1401 of 2021 arising out of C.R. Case No. 83 of 2019, insofar as the same relate to the petitioner Rouson Ara Mia, are hereby quashed. However, the proceedings should be proceeded against the co-accused in accordance with law.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

There shall be no order as to costs.

Let a copy of this judgment and order be communicated to the concerned Court forthwith.

A.K.M Rabiul Hassan, J.

I agree

Kashem, BO